

Supreme Court of the United States

October Term, 1944

JEREMIAH J. SULLIVAN, alias JERRY SULLIVAN,
Petitioner,
against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
SPECIAL SESSIONS OF THE CITY OF NEW YORK

RESPONDENT'S BRIEF

FRANK S. HOGAN
District Attorney
New York County

WHITMAN KNAPP
Assistant District Attorney

BERNARD L. ALDERMAN
ALAN J. ELLIOT
Deputy Assistant District Attorneys
Of Counsel

September, 1944



INDEX

	PAGE
PROCEEDINGS BELOW	1
JURISDICTION	2
STATUTE INVOLVED	2
FACTS	2
I—No federal question is presented to this Court	3
II—The petition for a writ of certiorari should be denied	5

TABLE OF CASES

Buchalter v. New York (1943) 319 U. S. 427, 429	4
Castillo v. McConnico (1898) 168 U. S. 674	4
Central Land Company v. Laidley (1895) 159 U. S. 103	4
Enterprise Irrigation District <i>et al.</i> v. Farmers Mutual Canal Company <i>et al.</i> (1917) 243 U. S. 157	4
McDonald v. Oregon Railroad and Navigation Company (1914) 233 U. S. 665, 669	4
Sayward v. Denny (1895) 158 U. S. 180	4
Snell v. Chicago (1894) 152 U. S. 191, 198	4

STATUTES

UNITED STATES, JUDICIAL CODE, § 237 (b); 28 U. S. C. A. § 344 (b)	2
CODE CRIM. PROC., § 520, subd. 3	2, 5
PENAL LAW, § 530	1

Supreme Court of the United States

October Term, 1944

JEREMIAH J. SULLIVAN, alias JERRY SULLIVAN,
Petitioner,
against

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
SPECIAL SESSIONS OF THE CITY OF NEW YORK

RESPONDENT'S BRIEF

Proceedings Below

The petitioner was convicted of the crime of COERCION (Penal Law, § 530) on October 15, 1943, in the Court of Special Sessions of the City of New York, New York County (129).* Several months thereafter, on March 2, 1944, his motion to set aside the judgment of conviction and for a new trial on the ground of newly discovered evidence was denied by the same court (170-1).

On appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, the judgment of conviction and order denying the motion for a new trial were affirmed without opinion, MARTIS, *P. J.*, dissenting and voting to reverse and dismiss the informa-

* References are to folios in the printed record on appeal to the Appellate Division of the Supreme Court of the State of New York, First Department.

tion (267 App. Div. 979). On May 31, 1944, leave to appeal to the Court of Appeals of the State of New York was denied by THACHER, J., a judge of that Court (Code Crim. Proc., § 520, subd. 3).

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended [28 U. S. C. A., § 344 (b)] upon the claim that the petitioner was denied due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States (Petition, p. 4; Petitioner's Brief, pp. 11-12).

Statute Involved

Section 530 of the Penal Law—which defines the crime of Coercion—reads, in so far as herein applicable, as follows:

“A person who with a view to compel another person to do or to abstain from doing an act which such other person has a legal right to do or to abstain from doing, wrongfully and unlawfully,

* * *

“3. Uses or attempts the intimidation of such person by threats or force,

“Is guilty of a misdemeanor.”

Facts

On August 17, 1943, the petitioner—by the use of force and violence—sought to influence a bus boy employed in Toots Shors' Restaurant, located in New York County, to vote against a certain union as the collective bargaining representative of the employees of the restaurant. As a consequence, he was tried and convicted of the crime of coercion on an information which charged that (11)

“on or about August 21, 1943 * * * with a view of compelling one Louis Villegas to do an act which said Louis Villegas had a legal right to abstain from doing,

[he] wrongfully and unlawfully used and attempted the intimidation of the said Louis Villegas by threats and force, in order that the said Louis Villegas should vote against the Hotel and Restaurant Workers Union Local 16, A. F. of L. as the bargaining agent for the employees of Toots Shor's Restaurant at an election before the New York State Labor Board."

Several months after his conviction, the defendant moved for a new trial on the ground of newly discovered evidence. In his motion papers, he asserted that it had recently been discovered that on August 17, 1943—the date of the alleged acts of coercion—no election had in fact been ordered by the New York State Labor Relations Board (195, *et seq.*). Then, maintaining that he had been charged with unlawfully seeking to influence Villegas to vote at an election ordered by the Board (184-5), he urged that Villegas could not "as a matter of fact or law have been coerced with respect to casting a vote at an election which at the time had not been ordered and was non-existent" (197).¹

In opposition to the motion, the People contended that Villegas' legal right to vote at an election of his collective bargaining representative existed as of August 17, 1943, despite the fact that no election had—as of that time—been ordered by the Board (238-9). This position was sustained by the trial court and, thereafter, by the Appellate Division (267 App. Div. 979).

I

No federal question is presented to this Court.

The only question raised by the petitioner is the construction of Section 530 of the New York State Penal Law,

1. We note that although the motion was made on the ground of newly discovered evidence, it actually was a claim that the People had failed to prove an essential element of its case—namely, that Villegas had been coerced with respect to an existing legal right.

defining the crime of coercion. It is the petitioner's contention that, under such law, no person can be convicted of coercing another with respect to his right to vote in a Labor Relations Board election unless the date of that election has actually been set by the Board. The courts of New York State have decided against the petitioner on this question. Even assuming the state courts to have been wholly wrong in their decision, such error could present no federal question to this Court.

See: *Buchalter v. New York* (1943) 319 U. S. 427, 429-430;

Enterprise Irrigation District et al. v. Farmers Mutual Canal Company et al. (1917) 243 U. S. 157, 166;

McDonald v. Oregon Railroad and Navigation Company (1914) 233 U. S. 665, 669-670;

Castillo v. McConnico (1898) 168 U. S. 674, 680; *Central Land Company v. Laidley* (1895) 159 U. S. 103, 112;

Sayward v. Denny (1895) 158 U. S. 180, 186;

Snell v. Chicago (1894) 152 U. S. 191, 198-199.

As this Court stated in the *Buchalter* case, *supra*, 319 U. S. 427, 429-430:

"The due process clause of the Fourteenth Amendment requires that action by a state through any of its agencies must be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions, which not infrequently are designated as 'the law of the land.' Where this requirement has been disregarded in a criminal trial in a state court this court has not hesitated to exercise its jurisdiction to enforce the constitutional guarantee. But the Amendment does not draw to itself the provisions of state constitutions or state laws. It leaves the states free to enforce their criminal laws under such statutory provisions and common law doctrines as they deem appropriate; and does not permit a party to bring to the test of

a decision in this court every ruling made in the course of a trial in a state court."

We do not, of course, concede that the state courts did err in their interpretation of the state statute. On the contrary, we quite agree with Judge THACHER's determination that the petitioner's arguments were so unsubstantial as not even to warrant consideration by the Court of Appeals (Code Crim. Proc., § 520, subd. 3). However, as the merits of the petitioner's claims are not before this Court, we shall not discuss them.

II

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK S. HOGAN
District Attorney
New York County

WHITMAN KNAPP
Assistant District Attorney

BERNARD L. ALDERMAN
ALAN J. ELLIOT
Deputy Assistant District Attorneys
Of Counsel

September, 1944.